Siddharthen a/l Raja v Public Prosecutor

HIGH COURT (PULAU PINANG) — CRIMINAL APPEAL NO 41S-80 OF 2011
ZAMANI A RAHIM J
25 NOVEMBER 2010

Criminal Law — Appeal — Appeal against sentence — Whether magistrate correct in finding that appellant's defence an afterthought — Penal Code ss 324, 354 & 452

Evidence — Corroboration — Sexual offence — Whether victim's evidence credible — Whether victim's account of crime committee by appellant, corroborated

Evidence — Identification evidence — Other evidence supporting identification evidence

The appellant and his accomplice had broken in SP3's house and upon discovering the absence of SP3's husband ('SP4'), the accused returned to his car and retrieved a *parang*. The accused then dragged SP3 to a room upstairs, locked the door and forced her to perform sexual acts on him. In an attempt to run, SP3 received several slashes on her legs inflicted by the accused using the *parang*. As the accused heard SP4's voice downstairs, he endeavored an escape and along the way, lacerated the couple's nine-month old baby girl ('Aisha') on the forehead. The appellant was found guilty and convicted of four charges by the magistrate's court namely under ss 324, 354, and 452 of the Penal Code ('Code') and s 7(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 ('Act'). The appellant then appealed against the sentences to the High Court. Learned counsel for the defence submitted that SP3's evidence of the charge for outraging of modesty under s 354 was a mere concoction and unfounded. The magistrate concluded that SP3's evidence was reasonable as it was corroborated by SP4 who was immediately present after the incident and the medical evidence of Dr Racheal ('SP7'). As for the charge under s 7(1) of the Act, learned counsel argued that there was a break in the chain of evidence as no evidence was adduced to show that the appellant was in possession and control of the *parang* during the material time. Learned counsel also alleged that in proving the appellant's presence in her house, SP3 was not made to identify by the police of the belongings of the appellant that he had left behind. Moreover, the appellant's fingerprints were not found on the *parang*. The magistrate found otherwise as the *parang* was already identified by SP3, SP4, SP5 and SP5 based on its physical distinctiveness which was a curve. There was

no doubt as to the possession and control of the *parang* as at all material times, it was with the appellant. Learned counsel then contended that the magistrate had erred in concluding that the accused's defence was an afterthought.

Held, dismissing the appeal:

(1) The court agreed with the magistrate's finding that SP3's evidence was very convincing and cannot be said to be highly improbable and irrational. Learned counsel complain on the lack of corroboration was devoid of merit. The magistrate was conscious that in a sexual offence, corroboration was required not as a rule of law but as a rule of prudence. He was also aware that a conviction on an uncorroborated evidence involving a sexual offence was not illegal, provided he warned himself of the dangers on convicting on such evidence. Assuming that SP3's evidence was uncorroborated, the magistrate rightly found there to be a credible and reliable witness under s 134 of the Evidence Act 1950 ('EA')where corroboration of her evidence was not mandatory. This section enshrined the maxim that 'evidence has to weighed and not counted' (see paras 8–10).

(2) Learned counsel submission on the issue of identification of the appellant and his belonging failed. The identity of the accused who committed house-tresspass, having made preparation for putting SP3 in fear of hurt or assault was not doubtful at all. The accused was positively identified by SP3 and there was no need for the police to call SP3 to identify the appellant's belongings. The lifting of the fingerprints of the *parang* was not necessary and failure of such would not attract adverse inference against the prosecution under s 114(g) of the EA (see paras 12–13).

(3) The magistrate had rightly called the accused to enter his defence on the four charges as the prosecution had succeeded in establishing a prima facie case against the accused. The court was in agreement with the magistrate that the appellant failed to cast any reasonable doubt on the truth of the prosecution case (see para 22).

(4) The accused was rightly convicted of all four charges. However, the sentences passed by the magistrate were manifestly inadequate and the court enhanced the sentences of the three charges under the Code while the sentence of the fourth charge under the Act remained undisturbed (see para 25).

[Bahasa Malaysia summary

Perayu dan rakan sejenayahnya telah memecah masuk ke dalam rumah SP3 dan setelah mendapati ketiadaan suami SP3 ('SP4'), tertuduh telah kembali ke keretanya dan mendapatkan parang. Tertuduh kemudian telah mengheret SP3 ke dalam bilik di tingkat atas, mengunci pintu dan memaksanya melakukan hubungan seksual dengannya. Dalam percubaan melarikan diri, SP3

menerima beberapa torehan luka di kakinya yang dibuat oleh tertuduh dengan menggunakan parang. Oleh kerana tertuduh telah mendengar suara SP4 di tingkat bawah, dia telah melarikan diri dan dalam perjalanan keluar, telah mencederakan bayi perempuan sembilan bulan ('Aisha') di bahagian dahinya. Perayu didapati bersalah dan disabitkan dengan empat pertuduhan oleh mahkamah majistret khususnya di bawah ss 324, 354, and 452 Kanun Keseksaan ('Kanun') dan s 7(1) Akta Bahan-Bahan Hakisan dan Letupan dan Senjata Berbahaya 1958 ('Akta'). Perayu kemudian telah merayu terhadap hukuman-hukuman tersebut ke Mahkamah Tinggi. Peguam bijaksana bagi pihak pembelaan berhujah bahawa keterangan SP3 yang pertuduhan pencabulan maruah di bawah s 354 hanya satu rekaan dan tidak berasas. Majistret memutuskan bahawa keterangan SP3 adalah munasabah kerana ia disokong oleh SP4 yang hadir sejurus selepas kejadian tersebut dan juga keterangan perubatan Dr Racheal ('SP7'). Berhubung pertuduhan di bawah s 7(1) Akta, peguam bijaksana berhujah bahawa rantaian keterangan terputus kerana keterangan yang dikemukakan menunjukkan bahawa perayu memiliki dan mengawal parang tersebut pada masa matan. Peguam bijaksana juga mendakwa bahawa dengan membuktikan kehadiran perayu dalam rumahnya, SP3 tidak diminta oleh polis untuk mengenalpasti barang milik perayu yang telah ditinggalkannya. Bahkan, cap jari perayu tidak ditemui pada parang tersebut. Majistret mendapati sebaliknya kerana parang tersebut telah dikenalpasti oleh SP3, SP4, SP5 dan SP5 berdasarkan perbezaan fizikal yang ketara padanya iaitu lengkung. Tidak diragui bahawa milikan dan kawalan parang tersebut adalah pada setiap masa matan adalah milik perayu. Peguam bijaksana kemudian menegaskan bahawa majistret terkhilaf dalam memutuskan bahawa pembelaan tertuduh hanya suatu yang difikirkan kemudian.

Diputuskan, menolak rayuan:

(1) Mahkamah bersetuju dengan penemuan majistret bahawa keterangan SP3 adalah meyakinkan dan tidak boleh dikatakan tidak berkemungkinan dan tidak rasional. Aduan peguam bijaksana berhubung sokongan yang tidak mencukupi adalah tanpa merit. Majistret sedar bahawa dalam kesalahan seksual, sokongan diperlukan bukan sebagai rukun undang-undang tetapi sebagai rukun berhati-hati. Beliau juga sedar bahawa sabitan atas keterangan yang tidak disokong yang melibatkan kesalahan seksual tidak menyalahi undang-undang, dengan syarat beliau mengingatkan dirinya tentang bahaya membuat sabitan atas keterangan sedemikian. Dengan anggapan bahawa keterangan SP3 tidak disokong, majistret sewajarnya mendapati terdapat saksi yang boleh dipercayai di bawah s 134 Akta Keterangan 1950 ('AK') di mana sokongan terhadap keterangannya bukan mandatori. Seksyen ini termaktub sepertimana dalam maxim bahawa keterangan perlu dinilai dan bukan dihitung (lihat perenggan 8–10).

(2) Hujah peguam bijaksana berhubung isu pengenalpastian perayu dan barang miliknya gagal. Identiti tertuduh yang menceroboh masuk rumah, yang telah membuat persediaan untuk membuat SP3 berasa takut akan dicederakan atau diserang tidak diragui langsung. Tertuduh telah dikenalpasti dengan positif oleh SP3 dan tiada keperluan untuk polis memanggil SP3 bagi mengenalpasti barang milik perayu. Pengambilan cap jari pada parang tidak perlu dan kegagalannya tidak menyebabkan inferens bertentangan terhadap pendakwaan di bawah s 114(g) AK (lihat perenggan 12–13).

(3) Majistret telah memanggil tertuduh dengan sewajarnya untuk memasukkan pembelaannya atas empat pertuduhan tersebut kerana pendakwaan telah berjaya membuktikan kes prima facie terhadap tertuduh. Mahkamah bersetuju dengan majistret bahawa perayu telah gagal menunjukkan apa-apa keraguan munasabah berhubung kebenaran kes pendakwaan (lihat perenggan 22).

(4) Tertuduh telah disabitkan sewajarnya atas kesemua empat pertuduhan. Walau bagaimanapun, hukuman-hukuman yang dijatuhkan oleh majistret amat tidak mencukupi dan mahkamah telah menambahkan hukuman-hukuman tiga pertuduhan tersebut di bawah Kanun manakala hukuman pertuduhan keempat di bawah Akta masih kekal (lihat perenggan 25).]

Notes

For a case on appeal againts sentence, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) para 30.

For a case on other evidence supporting identification, see 7(2) *Mallal's Digest* (4th Ed, 2011 Reissue) para 1998.

For cases on sexual offences, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 1158–1178.

Cases referred to

Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (refd)

Muthusamy v PP [1948] MLJ 57 (refd)

PP v Choo Chuan Wong [1992] 2 CLJ 1242, HC (refd)

Legislation referred to

Corrosive and Explosive Substances and Offensive Weapons Act 1958 s 7(1)
Evidence Act 1950 ss 114(g), 134
Penal Code ss 324, 354, 452

RSN Rayer (R Nethaji Rayer & Co) for the accused.
Emma Syafawati bt Abdul Wahab (Deputy Public Prosecutor) for the prosecution.

Zamani A Rahim J:

[1] In this appeal, one Siddharthen a/l Raja is the appellant ('the accused'). The accused was charged with four counts of charges as follows:

1) First Charge

Bahawa kamu pada 4 Oktober 2009 jam lebih kurang 10.30 malam, di No. 1, Lorong Cenderawasih Indah 6, Taman Cenderawasih Indah, Nibong Tebal dalam Daerah Seberang Perai Selatan, dalam Negeri Pulau Pinang, telah menggunakan kekerasan jenayah terhadap satu perempuan Melayu yang bernama Rosita binti Roslan, KP: 880730-08-5842, dengan niat untuk mencabul kehormatannya. Oleh yang demikian itu kamu telah melakukan kesalahan dan boleh dihukum di bawah seksyen 354 Kanun Keseksaan.

2) Second Charge

Bahawa kamu pada 4 Oktober 2009 jam lebih kurang 10.30 malam, di No. 1, Lorong Cenderawasih Indah 6, Taman Cenderawasih Indah, Nibong Tebal dalam Daerah Seberang Perai Selatan, dalam Negeri Pulau Pinang, telah didapati dengan sengaja mendatangkan cedera pada seorang budak perempuan nama: Aisha Deepika Rani binti Mohd. Kamarul, berumur 9 bulan dengan menggunakan senjata iaitu sebilah parang, yang mana jika digunakan boleh mendatangkan kecederaan. Oleh yang demikian itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 324 Kanun Keseksaan.

3) Third Charge

Bahawa kamu pada 4 Oktober 2009 jam lebih kurang 10.30 malam, di No. 1, Lorong Cenderawasih Indah 6, Taman Cenderawasih Indah, Nibong Tebal dalam Daerah Seberang Perai Selatan, dalam Negeri Pulau Pinang, telah melakukan pencerobohan rumah setelah persiapan dibuat bagi menyebabkan cedera kepada Rosita binti Roslan, KP: 880730-08-5842 dan mendatangkan ketakutan. Oleh yang demikian itu kamu telah melakukan kesalahan dan boleh dihukum di bawah seksyen 452 Kanun Keseksaan.

4) Fourth Charge

Bahawa kamu pada 4 Oktober 2009 jam lebih kurang 10.30 malam, di No. 1, Lorong Cenderawasih Indah 6, Taman Cenderawasih Indah, Nibong Tebal dalam Daerah Seberang Perai Selatan, dalam Negeri Pulau Pinang telah didapati memiliki atau berada di bawah kawalan kamu satu senjata iaitu sebilah parang yang panjangnya lebih kurang 3 kaki. Oleh yang demikian itu kamu telah melakukan kesalahan dan boleh dihukum di bawah seksyen 7(1) Akta Bahan-Bahan Hakisan Dan Letupan Dan Senjata Berbahaya 1958.

[2] At the conclusion of the entire trial, the accused was found guilty, convicted and sentenced as follows:

(a) The first charge — 12 months imprisonment term;

(b) The second charge — 20 months imprisonment term;

(c) The third charge — ten months imprisonment term; and

(d) The fourth charge — a fine of RM1,000 in default three months imprisonment term.

[3] The sentences of imprisonment terms were to run concurrently from the date of conviction ie 29 March 2011.

[4] The accused being dissatisfied with the conviction and sentences, he filed the appeal to this court.

[5] The prosecution evidence summarised by the magistrate in bahasa Malaysia are as follows:

> Keterangan SP3, ketika sedang menonton televisyen, beliau terdengar bunyi bising di bahagian luar pagar rumahnya. SP3 membuka pintu dan melihat OKT bersama rakannya Sugu menjerit bertanyakan di mana SP4. OKT (sepatutnya SP3) beritahu SP4 tiada dan menutup pintu rumah, dan mereka masih di luar pagar, Ketika hendak telefon SP4, tiba-tiba mereka *pecahkan pintu rumah* dan rampas handphone SP3. OKT dilihat memegang botol arak dan bertanya pasal kunci rumah. Apabila SP3 memberitahu kunci rumah tiada, OKT terus memecahkan botol arak tersebut pada dinding rumahnya. OKT telah keluar ke keretanya dan mengambil *sebilah parang* dan mengacu-acukan kepada SP3 dan anak-anak beliau di dalam rumah.
>
> *OKT menceroboh masuk dengan memecahkan pintu rumah beliau* dan mendapati suami mangsa iaitu SP4 tiada di rumah, OKT telah kembali ke keretanya dan mengambil sebilah parang dan mengacu-acukan kepada SP3 dan anak-anak beliau di dalam rumah. *OKT telah menarik tangan SP3 naik ke atas rumah, dan terus masuk ke dalam bilik dan OKT mengunci bilik tersebut.* Parang tersebut masih berada di tangan OKT dan OKT kemudian meletakkan parang itu ke leher SP3 dan bertanya di mana suami beliau. *Kemudiannya, OKT telah membuka baju SP3 dan menyuruhnya membuka seluar OKT. OKT kemudian mengarahkan SP3 memegang dan menghisap kemaluan OKT.* SP3 menangis-nangis sambil memberitahu tidak mahu melakukannya. Ketika OKT membuka semula pintu bilik, SP3 telah cuba berlari keluar namun OKT telah menarik semula SP3 masuk ke dalam bilik itu. Selepas itu SP3 bergaduh dengan OKT dan SP3 mengalami kecederaan pada kakinya iaitu calar-calar akibat terkena parang OKT.
>
> Setelah kejadian cabul berlaku ke atas SP3 di tingkat atas rumah, OKT terdengar suara SP4 di luar, OKT cuba hendak melarikan diri dan ketika sampai di bawah rumah *OKT menetak kepala anak madu SP3 dengan parang.* Anak madu SP 3 yang bernama *Aisha Deepika Rani berumur sembilan bulan* ketika itu sedang duduk di atas kerusi. Akibat pukulan OKT dengan parang itu, Aisha mengalami kecederaan di bahagian dahi kanan. Menurut keterangan SP4, ketika beliau tiba kepala Aisha sudah cedera dan ketika itu beliau lihat OKT memegang parang. Menurut SP7 iaitu doktor yang merawat Aisha, kecederaan yang dialami oleh mangsa Aisha dan

juga SP3 adalah konsisten dengan senjata yang digunakan semasa kejadian, iaitu kecederaan seperti itu boleh disebabkan oleh parang.

[6] By way of addition to the prosecution evidence, Dr Rachael Shamini Dorasamy, SP7 said a nine-month old baby girl, Aisha Deepika Rani sustained a 2cm laceration wound on the right side of her forehead. These injuries were consistent to have been caused by a parang: see medical report, P12A.

[7] On an outraging modesty charge under s 354 of the Penal Code, learned counsel submitted that SP3's evidence was a c mere concoction as she made no complaint to her husband, Mohd Kamarul bin Abdullah, SP4 and Kons Rahmat Aliff, SP5 regarding the assault on her by the accused. This how the magistrate dealt with the first charge under s 354 of the Penal Code:

> Mengenai pertuduhan di bawah s 354 Kanun Keseksaan, apa yang berlaku antara mereka berdua di dalam bilik rumah tersebut telah jelas diceritakan oleh mangsa ketika keterangan beliau di mahkamah. Tiada saksi bebas yang melihat kejadian ini. Namun, saya mendapati tiada satu pun perkara yang tidak munasabah di dalam keterangan mangsa ini. Namun, kes ini melibatkan satu jenayah seksual. Justeru, keterangan mangsa jenayah seksual perlu disokong sebelum diterima mahkamah. Meskipun tiada peruntukan undang-undang bertulis menyatakan sebegini, namun mahkamah di dalam kes-kes yang diputuskan telah menetapkan prinsip seperti ini iaitu keterangan mangsa kes seksual mestilah disokong oleh bukti yang lain sebelum boleh diterima oleh mahkamah, melainkan keterangan si mangsa betul-betul meyakinkan. Ini disebabkan, adalah amat merbahaya untuk kita menerima keterangan mangsa kes seksual tanpa bukti sokongan. Tuduhan atau dakwaan mencabul kehormatan adalah suatu yang senang dan mudah dibuat, namun amat sukar untuk dijawab dan dipatahkan (*easy to be made, hard to be rebutted*). Saya merujuk kepada kes *Koh Eng Soon v Rex* [1950] MLJ 52, di mana di dalam kes ini, mahkamah menyatakan bahawa:'that in such a case corroboration is desirable and as the learned magistrate had not given sufficient attention to this matter, the conviction must be quashed'. Manakala di dalam kes *Aziz bin Muhamad Din v Public Prosecutor* [1996] 5 MLJ 473, Augustine Paul J (ketika itu) menyatakan:'in a case involving sexual offence, a conviction based on uncorroborated evidence is not illegal, but the rule of practice regulates the manner in which uncorroborated evidence is to be treated, that is to say, the judge must warn himself of the dangers on convicting on such evidence'.
>
> Di dalam kes kita pada hari ini, saya mendapati keterangan SP3 iaitu mangsa cabul adalah amat meyakinkan dan munasabah. Tiada apa-apa perkara yang pelik pada keterangan beliau. Seterusnya, saya mendapati ada fakta yang menyokong keterangan beliau ini dan menunjukkan apa yang diadukan oleh mangsa ini benar-benar berlaku. Fakta yang menyokong ini ialah keterangan daripada SP4 iaitu suami SP3 yang turut berada di tempat kejadian sejurus selepas kejadian ini. SP3 memberitahu bahawa isterinya (SP3) mengalami calar-calar dan kecederaan pada bahagian kaki. Fakta ini disokong oleh keterangan SP7 (Dr Racheal) dan ini adalah satu fakta perubatan yang menyokong kepada kebenaran aduan dan dakwaan mangsa dan ini ianya mesti diterima sebagai keterangan sokongan di

dalam kes ini. Jelas di sini, keterangan mangsa yang merupakan mangsa perlakuan jenayah seksual telah disokong oleh fakta dan keterangan lain yang bebas.

[8] The magistrate is conscious that in a sexual offence such as the offence of outraging modesty, corroboration is required not as a rule of law but as a rule of prudence. It is easy for to make an allegation but difficult to rebut. The magistrate is also aware that a conviction on an uncorroborated evidence involving a sexual offence is not illegal, provided he warns himself of the dangers on convicting on such evidence. He cited the case of and the accused's assault on her. The evidence of SP3 and SP4 are further corroborated by the evidence of Dr Rachael Shamini Dorasamy, SP7.

[9] Assuming that SP3's evidence is not corroborated, the magistrate found her evidence was very convincing and cannot be said to be highly improbable or irrational. Referring to SP3's evidence on this issue, the magistrate said:

Di dalam kes kita pada hari ini, saya mendapati keterangan SP3 iaitu mangsa cabul adalah amat meyakinkan dan munasabah. Tiada apa-apa perkara yang pelik pada keterangan beliau. (p 18 of appeal record.)

[10] For completeness of argument, assuming that SP3's evidence is uncorroborated, the magistrate has found her to be a credible and reliable witness and by virtue of s 134 of the Evidence Act, corroboration of her evidence is not mandatory. The section enshrines the well recognised maxim that 'Evidence A has to be weighed and not counted'. In the Federal Court case of *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85, it was decided at p 301 (MLJ) p 94 (CLJ) as follows:

Where the evidence of a witness does not require to be corroborated in law there is no obligation to tender corroborative evidence to support his testimony. Thus if the case for the prosecution rests solely on the evidence of one witness in such a category there is no requirement in law for his evidence to be corroborated. Any such requirement will conflict with s 134 of the Evidence Act 1950 which provides that no particular number of witnesses shall in any case be required for the proof of any fact. This means that the testimony of a single witness, if believed, is sufficient to establish any fact (see *Khaw Cheng Bok & Ors v Khaw Cheng Poon & Ors* [1998] 3 MLJ 45).

[11] I am agreeable with the magistrate's findings as alluded above. Therefore, learned counsel complaint on the lack of corroboration is devoid of merit.

[12] Learned counsel also complained that the police did not cause SP3 to identify the *parang*, P3, necklace, P4 and a pair of shoes, P7 which were left

behind in SP3's house to prove the accused's presence there. Furthermore, learned counsel argued that the accused fingerprints were not found on the *parang*, P3.

[13] The identity of the accused who committed house-trespass, having made preparation for putting SP3 in fear of hurt or assault is not doubtful at all. The accused was positively identified by SP3. Thus, there is no necessity for the police to call SP3 to identify P3, P4 and P7 before the trial. Neither the lifting of the fingerprints on the parang, P3 is necessary. Such failure to lift the fingerprints do not attract an adverse inference against the prosecution under s 114(g) of the Evidence Act.

[14] Learned counsel submission on this issue is also failed.

[15] On the fourth charge under s 7(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958, learned counsel submitted that there is no evidence to show that the *parang*, P3 was in the possession or under the control of the accused at the material time. Learned counsel contention is contrary to the magistrate findings that there was no break in the chain of possession of the *parang*, P3 which was used by the accused to commit house-trespass, to threaten and molested SP3 and to cause hurt to a nine-year old Aisha Deepika Rani bt Mohd Kamarul. This is how the magistrate wrote in his judgment:

> Parang iaitu P3 telah dicamkan oleh SP3, SP4, SP5 dan SP6 – merujuk kepada parang yang digunakan oleh OKT ketika menceroboh, mencabul dan mencederakan mangsa-mangsanya berdasarkan kepada ciri-cirinya yang bengkok. Rantaian keterangannya tidak terputus kerana dari awal lagi ia dilihat oleh SP3 diambil dari dalam kereta OKT, digunakan sehingga OKT dipukul oleh orang awam yang datang bersama SP4 di rumahnya. SP4 turut mengecamnya dan ketika SP5 sampai di tempat kejadian, beliau terus merampasnya dan membawanya pula ke balai. Setiba di balai, SP5 menyerahkan parang tersebut kepada SP6 di mana SP6 membuat tandaan dan menyimpannya ke dalam stor eksibit. Oleh itu, tiada keraguan terhadap kawalan dan milikan parang tersebut kerana pada setiap masa, ia adalah milik OKT.

[16] Further, learned counsel contended that SP5 was informed by SP3 that Sugumar and Kumar had entered her house and both of them had assaulted her daughter with the *parang*. Having perused SP5's evidence, at no time did SP3 tell SP5 that Sugumar and Kumar had assaulted her nine-month old baby girl with the *parang*. This is how SP5's evidence reads:

> Ketika tahan (2) lelaki India, datang (1) perempuan Melayu dari dalam rumah beritahu (2) lelaki India yang saya tahan telah masuk ke dalam rumahnya. *Kemudian, perempuan itu suruh saya masuk untuk ambil parang yang ditinggalkan oleh orang yang telah memukul kepala anaknya.*

> Ketika mula-mula saya sampai, saya nampak sekumpulan lelaki India berada di hadapan rumah tersebut. Apabila saya mendekati mereka, terus larikan diri tetapi saya dapat tahan (2) lelaki India. Selepas itu, saya masuk dalam rumah tersebut dan menjumpai sebilah parang di atas lantai ruang tamu rumah tersebut.

[17] Learned counsel too contended that the magistrate had erred when he commented that the accused's defence was an afterthought. Learned counsel quoted SP3's evidence in cross-examination as follows:

> Suami saya telah dituduh di mahkamah berkaitan kes jenayah yang berlaku di Flat Bukit Panchor.

[18] And the accused evidence in examination-in-chief runs as follows:

> Saya dan Dorai bergaduh atas sebab kes di Bukit Panchor di mana Dorai kena tangkap dan isteri beliau telefon saya suruh saya jamin Dorai tetapi saya tidak mampu nak jamin. Apabila Dorai keluar, isteri Dorai telah minta RM3600 dari saya dan katakan Geng 36 sedang cari saya disebabkan Dorai masuk penjara, kalau saya tidak bayar, Geng 36 akan tembak saya. Inilah yang isteri Dorai dan Dorai beritahu saya.

[19] The quoted passage above is evidence of bad character. The magistrate should not have allowed the question in cross-examination on the ground that they are evidence of bad character and therefore inadmissible or irrelevant. In *Public Prosecutor v Choo Chuan Wong* [1992] 2 CLJ 1242, Edgar Joseph Jr J (as he then was) in disallowing questing put by the prosecution to the witness as to whether he was a gangster said at p 1250:

> … the learned deputy …, asked him if he was a gangster but, upon objection being taken by learned counsel for the defence, I disallowed the question on the ground that the question, if answered in the affirmative, would be evidence of bad character and such evidence would be inadmissible as the defence had not adduced evidence of good character of the accused nor had the defence impugned the character of any prosecution witness …

[20] In another case of *Munusamy v Public Prosecutor* [1948] MLJ 57, Taylor J said at p 59 that evidence adduced to show that the accused is a quarrelsome person and that he had quarreled before and on other occasions is irrelevant.

[21] The principle enunciated in *Choo Chuan Chong*'s case and *Munusamy*'s case are equally objectionable, if the question of bad character is raised, not by the prosecution but by the accused himself, as in this case.

[22] At the close of the prosecution case, the magistrate has rightly called the

accused to enter his defence on the four charges stated at the beginning of this judgment, as the prosecution has succeeded in establishing a prima facie case against the accused.

[23] The accused elected give evidence on oath. The magistrate was of the considered view that the accused defence was a mere concoction and an afterthought on the grounds summarised by the magistrate as follows:

(1) Versi OKT tidak disokong oleh apa-apa keterangan. Tiada penjelasan oleh OKT tentang kecederaan-kecederaan yang dialami oleh SP3 dan anak perempuannya.

(2) Percakapan beramaran OKT (D13) yang bersifat tidak menyokong keterangan OKT. Tiada apa yang dapat diwujudkan dari D13 yang boleh membantu keterangan OKT selain dari versi penceritaan yang bersifat 'penafian yang selamat' untuk mengelakkan diri dari sebarang sabitan.

(3) OKT menafikan telah masuk ke dalam rumah. Namun, pengataan OKT juga bercanggah dengan pernyataan SP3 bahawa OKT telah menceroboh masuk membawa parang dan SP4 yang nampak OKT di tempat kejadian pada masa kejadian. Kewujudan parang bengkok yang digunakan untuk mencederakan mangsa dan barangan milik OKT iaitu sepasang kasut dan rantai telah menyokong keterangan saksi pendakwaan bahawa OKT memang berada di dalam rumah pada waktu kejadian.

(4) OKT menyatakan isteri SP4 meminta dibayar sejumlah wang RM3,600 dan sekiranya gagal, Geng 36 akan mencari dan mengapa-apakan beliau. Versi ini langsung tidak ditimbulkan semasa pemeriksaan balas terhadap saksi-saksi pendakwaan iaitu SP3 dan SP4.

[24] I am in agreement with the magistrate that the accused has failed to cast any reasonable doubt on the truth of the prosecution case. And further, the magistrate concluded that the prosecution has proved its case beyond reasonable doubt.

[25] The accused is, therefore, rightly convicted on all the four charges instituted against him. However, having regard the facts and circumstances of this, I am of the considered view that the sentences passed by the magistrate were manifestly inadequate. I, therefore, enhanced the sentences on the three charges as follows:

(a) the first charge under s 354 of the Penal Code, the accused is sentenced to five years imprisonment term;

(b) the second charge under s 324 of the Penal Code, the accused is sentenced to two years imprisonment term; and

(c) the third charge under s 452 of the Penal Code, the accused is sentenced to three years imprisonment term.

[26] All the imprisonment terms for the first, second and third charges were to run concurrently from today ie 25 November 2011.

[27] The sentence of a fine of RM1,000 in default three months imprisonment term in respect of the fourth charge under s 7(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 remained undisturbed.

Appeal dismissed.

Reported by Ibnu Aswan